HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT APPEAL NO.1315 OF 2001
AND
WRIT APPEAL NO. 936 OF 2006

WRIT APPEAL NO.1315 OF 2001

BETWEEN

Government of Andhra Pradesh,
Rep. by its Secretary,
Energy, Forest, Environment, Science and
Technology Department, Hyderabad & others.

.....

Appellants

And

Vemuganti Ramakishan Rao & others

.....Respondents

Counsel for the Appellants : Government Pleader for

Land Acquisition

WRIT APPEAL NO. 936 OF 2006

BETWEEN

The Singareni collieries Company Limited,
Godavarikhani

.....Appellants

And

Vemuganti Ramakishan Rao & others

.....Respondents

Counsel for the Appellant : Ms. Uma Devi

Counsel for Respondent Nos. 5 to 7 : Government Pleader for Land Acquisition

Date: 07.09.2006

:: COMMON JUDGMENT ::

Per G.S. SINGHVI, CJ

The only issue which arises for determination in these appeals filed against order dated 04.07.2001 passed by the learned Single Judge in Writ Petition No.22875 of 1999 is whether the Land Acquisition Officer can pass an award after expiry of two years period specified in Section 11-A of the Land Acquisition Act, 1894 (for short 'the Act') as inserted by Act No.68 of 1984.

The Facts:

On receipt of requisition from General Manager, Personnel of Singareni Collieries Company Limited, Godavarikhani (hereinafter described as 'the company') for acquisition of land measuring

Ac.35-09 gts. comprised in Survey Numbers 285, 287 and 288 situated in Jallaram Village, Kamanpoor Mandal, Karimnagar District, the Land Acquisition Officer-cum-Special Deputy Collector submitted draft notification and draft declaration proposals under Sections 4 (1) and 6 of the Act. He also suggested that urgency clause under Section 17 (4) of the Act may be invoked for acquisition of the land. The Collector forwarded the proposal to the State Government, which granted approval vide G.O.Rt.No.592, EFES & T (PR.I) Department, dated 6-8-1992 and Memo No.7695/Pr.I/2/92 dated 24-8-1992. Thereafter, notifications under Sections 4 (1) and 6 of the Act were issued and published on 5-3-1993 and 9-3-1993 respectively. After about three months, General Manager of the Company made a request that the case be processed without resorting to urgency

clause because the possession could not be taken on account of existence of structures on the land proposed to be acquired. As a sequel to this, notices dated 7-11-1993 were issued to the interested persons requiring them to file objections under Section 5-A of the Act by 20-12-1993. Thereafter, draft notification under Section 4 and draft declaration under Section 6 were approved by the State Government vide Memo No.3408/Pr.I/2/94-1 dated 1-3-1994 and Memo No.3402/Pr.I/2/ 94-2, dated 1-3-1994 and were published by different modes. The last publication of draft declaration under Section 6 was made on 4-3-1994.

The respondents challenged the notification issued under Section 4 (1) in Writ Petition No.27483 of 1995. They also filed WPMP No.33913 of 1995 for staying further proceedings. By an order dated 6-12-1995, a learned Single Judge of this Court stayed the acquisition proceedings. Subsequently, the writ petition was dismissed. Writ Appeal No.1228 of 1999 filed by the respondents was also dismissed by the Division Bench, vide judgment dated 30-8-1999. Thereafter, the Land Acquisition Officer pronounced the award on 5-11-1999.

The respondents questioned the award in Writ Petition No.22875 of 1999 on the ground that the same had been passed after expiry of two years period specified in Section 11-A of the Act. They pleaded that the award is nullity and, therefore, the same is liable to be ignored.

In the counter-affidavit filed on behalf of the non-petitioners (appellants herein), reliance was placed on explanation appended to Section 11-A and it was pleaded that the writ

petitioners cannot take advantage of the stay order obtained by them in Writ Petition No.27483 of 1995. They further pleaded that the time spent in obtaining copy of the award is liable to be excluded from the period of two years within which award is required to be made in terms of Section 11-A.

The learned Single Judge quashed the award by observing that the same had been passed after lapse of two years period specified in Section 11-A of the Act. He held that in view of the explanation appended to Section 11-A, the period during which the acquisition proceedings remained stayed by the High Court i.e. from 6-12-1995 to 28-7-1999 is liable to be excluded for the computation of two years, but even then the award passed on 5-11-1999 will be deemed to have been passed after expiry of the prescribed period.

Learned Government Pleader and Ms.Uma Devi, counsel for the company assailed the order under challenge by arguing that the reasons assigned by the learned Single Judge for quashing the award passed by the Land Acquisition Officer are legally untenable. Learned counsel submitted that delay in making the award was occasioned because copy of order dated 28-7-1999 passed by the learned Single Judge was not received by the officer concerned and the appeal filed by the respondents was pending before the Division Bench. They further argued that the respondents should not be allowed to take advantage of the stay granted by the learned Single Judge at their instance and the entire period during which the proceedings remained stayed, as also the period spent in obtaining copy of the order of the learned

Single Judge, should be excluded for the purpose of computation of two years specified in Section 11-A.

We have given serious thought to the submissions of the learned counsel, but we have not felt persuaded to agree with them. Section 11-A of the Act, which mandates the making of an award within a period of two years, reads as under:

> **"11-A.Period within which an award shall be made:**
>
> The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:
>
> Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, (68 of 1984), the award shall be made within a period of two years from such commencement.
>
> **Explanation:** In computing the period of 2 years referred to in this Section, the period during which any action or proceedings to be taken in pursuance of the said declaration is stayed by an order of a Court, shall be excluded."

A reading of the above reproduced provision makes it clear that the Collector is required to make an award under Section 11 within a period of two years from the date of publication of the declaration. The consequence of not making an award within that period is that the acquisition proceedings automatically lapses. The use of the word 'shall' in the opening line of Section 11-A with a stipulation of consequence of not making an award within a period of two years is clearly indicative of the mandatory character of that section. Therefore, it must be held that the Collector does not have any option but to make an award within

two years of the publication of declaration. The explanation appended to Section

11-A provides for exclusion of the period during which the award proceedings remain stayed by the Court. The effect of the explanation is that if the proceedings of acquisition are stayed during the period of two years specified in Section 11-A, then the entire period of stay is liable to be excluded while counting two years. However, there is nothing in the language of Section 11-A or the explanation from which it can be inferred that the time spent by a party in obtaining copy of order passed by the Court vacating the stay or dismissing the petition is liable to be excluded from the period of two years specified in the substantive part of Section 11-A. The Legislature has, in its wisdom, prescribed two years period from the date of publication of declaration within which an award is required to be made by the Collector. Provision has also been made for exclusion of the period during which any action or proceedings to be taken in pursuance of the declaration is stayed by the Court. If the Legislature wanted to exclude the time spent in obtaining copy of the order, a specific provision to that effect would have been made. However, the fact of the matter is that the law making authority has thought it proper to exclude only that period during which the proceedings remain stayed by the competent court. In our opinion, the omission of exclusionary clause qua the period spent in obtaining copy is deliberate. Therefore, this omission cannot be supplied by the Court by giving an over-stretched interpretation to the language of Section 11-A or its explanation. That would amount to indirectly amending Section

11-A and it is settled law that the Court is not entitled to undertake such an exercise.

No other point has been argued by the learned counsel for the appellants.

In the result, the appeals are dismissed.

As a sequel to dismissal of the writ appeals, W.A.M.P.No. 1488 of 2006 filed by the appellants in Writ Appeal No.1315 of 2001 for interim relief is also dismissed and the stay order passed by the Division Bench is vacated.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

07.09.2006
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